

SENATE BILL 856

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11r2749

By: **Senator Conway**

Introduced and read first time: February 14, 2011

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Higher Education Commission – Review of Program Proposals**

3 FOR the purpose of requiring the Maryland Higher Education Commission to review
4 certain program proposals through certain processes, including certain
5 testimony and the weighing of evidence; requiring the Commission to adopt
6 certain regulations that provide for the receipt of certain comments and
7 objections under certain circumstances; altering certain circumstances under
8 which the Commission must act on certain program proposals before a proposal
9 is deemed approved; requiring the Commission to make certain determinations
10 through certain processes, including receiving certain testimony and the
11 weighing of evidence; requiring the Commission to adopt certain regulations;
12 repealing a certain provision that states that a certain decision is final and not
13 subject to further appeal or review; and generally relating to the review of
14 program proposals by the Maryland Higher Education Commission.

15 BY repealing and reenacting, with amendments,
16 Article – Education
17 Section 11–206(b) and (e)(6) and 11–206.1(f)
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2010 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Education
22 Section 11–206(e)(1) and (2) and 11–206.1(e)
23 Annotated Code of Maryland
24 (2008 Replacement Volume and 2010 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Education**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-206.

2 (b) (1) Prior to the proposed date of implementation, the governing body
3 of an institution of postsecondary education shall submit to the Commission each
4 proposal for:

5 (i) A new program; or

6 (ii) A substantial modification of an existing program.

7 (2) The Commission shall review each such proposal and:

8 (i) With respect to each public institution of postsecondary
9 education, either approve or disapprove the proposal;

10 (ii) With respect to each nonpublic institution of higher
11 education, either recommend that the proposal be implemented or that the proposal
12 not be implemented; and

13 (iii) With respect to a private career school, either approve or
14 disapprove the proposal.

15 **(3) THE COMMISSION SHALL ADOPT REGULATIONS THAT**
16 **PROVIDE FOR:**

17 **(I) THE RECEIPT OF COMMENTS AND OBJECTIONS FROM**
18 **APPROPRIATE PARTIES FOLLOWING SUBMISSION OF A COMPLETED PROPOSAL;**
19 **AND**

20 **(II) THE REVIEW OF OBJECTIONS RECEIVED BY THE**
21 **COMMISSION IN ACCORDANCE WITH A DELIBERATIVE FACT-FINDING PROCESS,**
22 **INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE.**

23 **[(3)] (4)** If the Commission **DOES NOT RECEIVE ANY COMMENTS**
24 **OR OBJECTIONS TO THE COMPLETED PROPOSAL AND** fails to act within 60 days of
25 the date of submission of the completed proposal, the proposal shall be deemed
26 approved.

27 **[(4)] (5)** Except as provided in paragraph **[(3)] (4)** of this subsection,
28 a public institution of postsecondary education and private career school may not
29 implement a proposal without the prior approval of the Commission.

30 **[(5)] (6)** Except as provided in paragraph **[(3)] (4)** of this subsection,
31 and subject to the provisions of § 17-105 of this article, a nonpublic institution of
32 higher education may implement a proposal that has not received a positive
33 recommendation by the Commission.

1 **[(6) (7)** (i) If the Commission disapproves a proposal, the
2 Commission shall provide to the governing body that submits the proposal a written
3 explanation of the reasons for the disapproval.

4 (ii) After revising a proposal to address the Commission's
5 reasons for disapproval, the governing body may submit the revised proposal to the
6 Commission for approval.

7 (e) (1) In this subsection, "governing board" includes the board of trustees
8 of a community college.

9 (2) The Commission shall adopt regulations establishing standards for
10 determining whether 2 or more programs are unreasonably duplicative.

11 (6) (i) Prior to imposing a sanction under paragraph (5) of this
12 subsection, the Commission shall give notice of the proposed sanction to the governing
13 board of each affected institution.

14 (ii) 1. Within 20 days of receipt of the notice, any affected
15 institution may request an opportunity to meet with the Commission and present
16 objections.

17 2. If timely requested, the Commission shall provide
18 such opportunity prior to the Commission's decision to impose a sanction.

19 **[(iii) The Commission's decision shall be final and is not subject**
20 **to further administrative appeal or judicial review.]**

21 11-206.1.

22 (e) Within 30 days of receipt of a notice of an institution's intent to establish
23 a new program in accordance with subsection (b) of this section, the Commission may
24 file, or the institutions of higher education in the State may file with the Commission,
25 an objection to implementation of a proposed program provided the objection is based
26 on:

27 (1) Inconsistency of the proposed program with the institution's
28 approved mission for a public institution of higher education and the mission
29 statement published in the official catalog of a nonpublic institution of higher
30 education;

31 (2) Not meeting a regional or statewide need consistent with the
32 Maryland State Plan for Postsecondary Education;

33 (3) Unreasonable program duplication which would cause
34 demonstrable harm to another institution; or

1 (4) Violation of the State's equal educational opportunity obligations
2 under State and federal law.

3 (f) (1) If an objection is filed under subsection (e) of this section by the
4 Commission or an institution within 30 days of receipt of a notice of an institution's
5 intent to establish a new program, the Commission shall immediately notify the
6 institution's governing board and president.

7 (2) **[The] THROUGH A DELIBERATIVE FACT-FINDING PROCESS,**
8 **INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE,**
9 **THE** Commission shall determine if an institution's objection is justified based on the
10 criteria in subsection (e) of this section.

11 (3) An objection shall be accompanied by detailed information
12 supporting the reasons for the objection.

13 (4) If the Commission determines that an objection is justified, the
14 Commission shall negotiate with the institution's governing board and president to
15 modify the proposed program in order to resolve the objection.

16 (5) If the objection cannot be resolved within 30 days of receipt of an
17 objection, the Commission shall make a final determination on approval of the new
18 program for a public institution of higher education or a final recommendation on
19 implementation for a nonpublic institution of higher education.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 July 1, 2011.